

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRR-378-2022

Date of Decision: 04.08.2023

Chander Kala

....Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Ashok Kumar Khunger, Advocate, for the petitioner.

Mr. Gurdarshan Singh Sidhu, AAG, Punjab.

HARNARESH SINGH GILL, J.

Challenge in the present petition is to the judgment dated 23.02.2021 passed by the learned Sessions Judge, Fazilka, whereby while affirming the judgment dated 15.03.2016 passed by the Judicial Magistrate, Ist Class, Abohar, convicting accused-respondent Nos. 2 to 6, the benefit of the probation was granted to the said respondents-accused.

Learned counsel appearing for the petitioner would vehemently argue that the learned trial Court, had rightly passed the judgment of conviction and order of sentence dated 15.03.2016, whereby accused-respondent Nos. 2 to 6, were convicted under Sections 452, 325, 323, 147, 149 IPC and were awarded sentence of variable terms, the maximum being one year each, besides payment of fine. It is further submitted that the trial Court, had taken into consideration the entire evidence and material on record and had rightly held that all the accused while forming an unlawful assembly, had caused injuries on the person of the complainant-

injured and that in order to reach the said conclusion, the trial Court had rightly relied upon the testimony of PW3-Sahil Chhabra, who had medico legally examined complainant-injured Chanderkala.

Learned counsel for the petitioner further submits that the learned Sessions Judge, Fazilka, has affirmed the finding of guilt on the part of the respondents-accused, but wrongly granted them the benefit of probation. It is further submitted that it is not a fit case, where the Appellate Court could have extended such benefit of probation as it stood proved on record that the respondents-accused, had formed an unlawful and caused injuries on the person of the injured-complainant, in furtherance of their common objective.

On the other hand, the learned State counsel, who is present in Court, on the service of the advance notice of the present petition, defends the judgment passed by the learned Sessions Judge, and submits that a proper reasoning has been given by the learned Sessions Court, for releasing the accused-respondents on probation.

I have heard the learned counsel for the petitioner and the learned State Counsel.

The only dispute is as regards the grant of benefit of probation to the accused-respondent Nos. 2 to 6. A perusal of the impugned judgment passed by the learned Sessions Judge, Fazilka, would show that while extending the benefit of probation to accused-respondent Nos.2 to 6, it was taken into consideration that the said respondents are members of the same family and they had been facing the agony of trial for the last nearly 7 years. The

relevant extract from the judgment of the learned Appellate Court, would read as under:-

“.....However, bearing in mind that close family members are involved and if in these circumstances, the substantive punishment is maintained, it would further stock enmity between the parties. In these circumstances, I find it a fit case where benefit of probation can be extended to the convicts. Consequently, instead of maintaining the sentence imposed upon the convicts by the learned trial Magistrate, all the convicts are ordered to be released on probation on their furnishing probation bonds in the sum of Rs.20,000/- each with one surety each in the like amount for the period of one year with an undertaking not to commit such offence again and to maintain peace and tranquility during all this period, failing which they shall be called upon to receive the resentence and their appeal against sentence part of the judgment shall also be deemed to have been dismissed.

However, all the appellants/convicts are jointly imposed costs of litigation amount to Rs.90,000/-. The costs of litigation, if deposited, shall go to injured Chander Kala, as compensation.....”

Besides, the above, it was also found by the learned Appellate Court that in a cross-case at the instance of accused-respondent Rajesh Kumar, the complainant party was granted the benefit of probation.

This Court finds that the impugned judgment does not call for any interference. Firstly, the accused-respondents are close family members and they have faced the protracted trial for nearly seven years. Still further, the accused-respondents were not found

to be habitual offenders and, therefore, benefit of probation granted to them, cannot be said to be unsustainable in the eyes of law.

Learned counsel for the petitioner could not dispute the finding of the trial Court as regards the factum of the cross-case at the instance of accused-respondent Rajesh Kumar and the complainant-party, having been given the benefit of probation in the said case.

No other point has been urged.

In view of the above, finding no merit in the present petition, the same is hereby dismissed.

04.08.2023
ds

(HARNARESH SINGH GILL)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No